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CONSUMER ASSISTANCE
AND SMALL BUSINESS
DIVISION

State of California
DEPARTMENT OF JUSTICE



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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Attention: Patti Grace Smith, Chief
Consumer Assistance and Small
Business Division
Office of Public Affairs

RE: Proposals Put Forth to Implement the
Consumer Protection Act of 1991

Dear Ms. Smith:

Recorded Calls

California has regarded prohibition against utilizing automatic telephone dialing systems to produce recorded messages as obviously warranted. However, although it is sometimes possible to determine the identity of a company utilizing a recording, it is extremely difficult for law enforcement agencies to prove that an automatic telephone dialing system is utilized.

Under California's Civil Code section 1770(v), there is a prohibition against disseminating an unsolicited pre-recorded message by telephone without an unrecorded, natural voice first informing the person answering the telephone of the name of the caller or the organization being represented, and either the address or the telephone number of the caller, without obtaining the consent of that person to listen to the pre-recorded message. The exemptions from this statute are similar to the ones you are proposing. The language in the California statute would appear to be of greater effect since it is not restricted to automatic dialing.

In regard to the nature of the business relationship necessary for exemption, the California statute exempts messages "disseminated to a business associate, customer, or other person having an established relationship with the person or organization

making the call, to a call for the purpose of collecting an existing obligation, or to any call generated at the request of the recipient". Although no cases have been presented to a court for the interpretation of this section, it is obvious under California law that an established relationship is not prior solicitation nor did the California legislature intend that it should be.

In regard to non-commercial calls, there is no attempted prohibition in the present proposal against such calls, but only against those which are recorded. If the FCC wishes to exempt non-commercial calls, it should be very careful how to define them. Some of the most objectionable calls are allegedly for charitable solicitations. There is as much fraud and misrepresentation in this field as there is in the "commercial" fields.

Regarding commercial calls that do not transmit an advertisement, the examples that you gave are examples which would already be exempted because they are between persons who have an established relationship. We have not noted any examples other than those already exempted by other sections.

Pertaining to calls by tax exempt, non-profit organizations, there are many tax exempt organizations which utilize "agents" sometimes at a 70 to 80% commission, to sell goods or to seek solicitations. Whether "profit" is made by the organization itself appears to be irrelevant in determining whether unsolicited recorded messages should be allowed.

Regarding calls to former or existing clientele, those would appear to be already exempted because the individuals have an established relationship.

As far as emergency calls are concerned, the definitions may be critical. For example, companies may use recorded messages to sell burglar alarm systems or water treatment devices, or even vitamins, and argue that prevention of burglaries, protection of health, and prevention of disease would constitute emergencies.

In regard to solicitations to businesses, most businesses utilize their telephones to a greater extent than those at home and the interference by recorded messages of those they do not wish to speak to is even more invasive.

Facsimile Calls

Regarding facsimile machines, I note that there is no limitation to the number of pages sent nor to the time during which the message is sent. It should be remembered that the recipient of the facsimile call pays for the paper and thus partially pays for the solicitation. In addition, reception of these unsolicited

messages interferes with the recipient's machine. Modern machines allow facsimile messages to be sent and received at the same time, although even in such cases the sending of unsolicited facsimile messages might limit memory of the machine. There appears to be no legitimate reason for facsimile messages which are unsolicited, even if they are allowed by the Federal Communication Commission, to be sent during normal business hours when usage of the machines is heavy. If allowed at all, they should be used during normal non-business hours and be limited in length.

Restriction of telephone solicitation.

There have been several bills in California regarding the ability of consumers to decline unsolicited calls. We have made no definitive study on the cost/benefit aspects and take no position at this time.

Sincerely,

DANIEL E. LUNGREN
Attorney General



HERSCHEL T. ELKINS
Senior Assistant Attorney General

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